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CHAPTER V

UPPER CANADA—EARLY PERIOD

The first Parliament of the Province of Upper Canada sat at Newark formerly and now Niagara-on-the-Lake, September 17, 1792. The very first act of this first Parliament of Upper Canada reintroduced the English civil law.¹ This did not destroy slavery, nor did it ameliorate the condition of the slave. It was rather the reverse, for as the English law did not, like the civil law of Rome and the systems founded on it, recognize the status of the slave at all, when it was forced by grim fact to acknowledge slavery, it had no room for the slave except as a mere piece of property. Instead of giving him rights like those of the "servus," he was deprived of all rights, marital, parental, proprietary, even the right to live. In the English law and systems founded on it, the slave had no rights which the master was bound to respect.² At one time, indeed, it was understood in the English colonies that the master had the *jus vitæ necisque* over his slaves; but at the beginning of the eighteenth century the Crown much to the anger and disgust of the colonists made the murder of a Negro a capital offence, and at least some of the governors vigorously upheld this decision.³

Upper Canada was settled almost wholly by United Empire Loyalists who had left their homes in the revolted colonies and kept their faith to the Crown. Many of them

¹ The Statute is (1792) 32 George III, c. 1 (U. C.).

² Compare the opinion of the Chief Justice of the Supreme Court of the United States in the celebrated Dred Scott case. 19 Howard, 354, pp. 404, 405.

³ See as to this Reginald W. Jeffery, *The History of The Thirteen Colonies of North America 1497-1763* (London), p. 190. This interesting work which I have found accurate gives Governor Spotswood as enforcing the Royal decree rigidly.

brought their slaves as well as their other property to the new land. The statute of 1790 encouraged this practice.⁴

The first Lieutenant-Governor of Upper Canada was Col. John Graves Simcoe. He hated slavery and had spoken against it in the House of Commons in England. Arriving in Upper Canada in the summer of 1792, he was soon made fully aware by the Chloe Cooley case that the horrors of slavery were not unknown in his new province. There came up to the Executive Council the complaint that a Negro girl thus named had been cruelly forced across the border and sold in the United States by one Vroomen. Much indignation was expressed by both citizens and officials.

⁴ See ante, p.

⁵ This is copied from the Canadian Archives, Q. 282, pt. 1, pp. 212 sqq.; taken from the official report sent to Westminster by Simcoe. There is the usual amount of uncertainty in spelling names Grisley or Crisley, Fromand, Frooman, Froomond or Fromond (in reality Vrooman).

The following is a report of a meeting of his Executive Council:

“At the Council Chamber, Navy Hall, in the County of Lincoln, Wednesday, March 21st, 1793.

“Present

“His Excellency, J. G. Simcoe, Esq., Lieut.-Governor, &c., &c.,

The Honble. Wm. Osgoode, Chief Justice,

The Honble. Peter Russell.

“Peter Martin (a negro in the service of Col. Butler) attended the Board for the purpose of informing them of a violent outrage committed by one Fromand, an Inhabitant of this Province, residing near Queens Town, or the West Landing, on the person of Chloe Cooley a Negro girl in his service, by binding her, and violently and forcibly transporting her across the River, and delivering her against her will to certain persons unknown; to prove the truth of his Allegation he produced Wm. Grisley (or Crisley).

“William Grisley an Inhabitant near Mississague Point in this Province says: that on Wednesday evening last he was at work at Mr. Froemans near Queens Town, who in conversation told him, he was going to sell his Negro Wench to some persons in the States, that in the Evening he saw the said Negro girl, tied with a rope, that afterwards a Boat was brought, and the said Frooman with his Brother and one Vanevery, forced the said Negro Girl into it, that he was desired to come into the boat, which he did, but did not assist or was otherwise concerned in carrying off the said Negro Girl, but that all the others were, and carried the Boat across the River; that the said Negro Girl was then taken and delivered to a man upon the Bank of the River by Froomand, that she screamed violently and made resistance, but was tied in the same manner as when the said William Grisley first saw her, and in that con-

The Attorney-General was John White⁶ an English lawyer of no great eminence indeed but of sufficient skill to know that the brutal master was well within his rights in acting as he did. He had the same right to bind, export, and sell his slave as to bind, export, and sell his cow. Chloe Cooley had no rights which Vrooman was bound to respect; and it was no more a breach of the peace than if he had been dealing with his heifer. Nothing came of the direction to prosecute and nothing could be done unless there should be an actual breach of the peace.

It is probable that it was this circumstance which brought about legislation. At the second session of the First Parliament which met at Newark, May 31, 1793, a bill was introduced and unanimously passed the House of Assembly. The trifling amendments introduced by the Legislative Council were speedily concurred in, the royal assent was given July 9, 1793, and the bill became law.⁷

Simcoe, as was his duty, reported to Henry Dundas afterwards Lord Melville, Secretary of State for the Home Department concerning this Act September 28, 1793.

dition delivered to the man . . . Wm. Grisley farther says that he saw a negro at a distance, he believes to be tied in the same manner, and has heard that many other People mean to do the same by their Negroes.

“RESOLVED—That it is necessary to take immediate steps to prevent the continuance of such violent breaches of the Public Peace, and for that purpose, that His Majesty’s Attorney-General, be forthwith directed to prosecute the said Fromond.

“ADJOURNED.”

⁶ John White was called to the bar in 1785 at the Inner Temple. He practised for a time but unsuccessfully in Jamaica and through the influence of his brother-in-law, Samuel Shepherd, and of Chief Justice Osgoode was appointed the first Attorney General of Upper Canada. It is probable, but the existing records do not make it certain, that it was he who introduced and had charge in the House of Assembly of the bill for the abolition of slavery passed in 1793, shortly to be mentioned. His manuscript diary is still extant, a copy being in the possession of the writer: One entry reads under date Newark Tuesday March 6 1793 “John Young from Grand River came with Mr. Mac-Michael respecting his runaway negro. Rec’d 5 Dols.”

⁷ The statute is (1793) 33 Geo. III, c. 7 (U. C.). The Parliament of Upper Canada had two houses, the Legislative Council, an upper house, appointed by the Crown; and the Legislative Assembly, a lower house or House of Commons, as it was sometimes called, elected by the people. The Lieutenant

Simcoe had discovered that there was much resistance to the slave law. There were many plausible arguments of the demand for labor and the difficulty of obtaining "Servants to cultivate Lands." "Some possessed of Negroes," said he, "knowing that it was very questionable whether any subsisting Law did authorize Slavery and having purchased several taken in war by the Indians at small prices wished to reject the Bill entirely; others were desirous to supply themselves by allowing the importation for two years. The matter was finally settled by undertaking to secure the property already obtained upon condition that an immediate stop should be put to the importation and that Slavery should be gradually abolished."⁸

The Act recited that it was unjust that a people who enjoy freedom by law should encourage the introduction of slaves, and that it was highly expedient to abolish slavery in the province so far as it could be done gradually without violating private property. It repealed the Imperial Statute of 1790 so far as it related to Upper Canada, and to enact that from and after the passing of the act "No Negro or other person who shall come or be brought into this Province . . . shall be subject to the condition of a slave or to bounden involuntary service for life." With that regard for property characteristic of the English-

Governor gave the royal assent. The bill was introduced in the Lower House, probably by Attorney General White, as stated in last note, and read the first time, June 19. It went to the committee of the whole June 25, and was the same day reported out. On June 26 it was read the third time, passed and sent up for concurrence. The Legislative Council read it the same day for the first time, went into committee over it the next day, June 28, and July 1, when it was reported out with amendments, passed and sent down to the Commons July 2. That house promptly concurred and sent the bill back the same day. See the official reports: *Ont. Arch. Reports for 1910* (Toronto, 1911), pp. 25, 26, 27, 28, 32, 33. *Ont. Arch. Rep. for 1909* (Toronto, 1911), pp. 33, 35, 36, 38, 41, 42.

⁸ *Canadian Archives*, Q. 279, 2, p. 335.

White in his diary says "To the 21 June, some opposition in the House not much"—under date June 25 when the Bill was in Committee of the whole he says "Debated the Slave Bill hardly: Met much opposition but little argument."

speaking peoples, the act contained an important proviso which continued the slavery of every "negro or other person subjected to such service" who had been lawfully brought into the province. It then enacted that every child born after the passing of the act, of a Negro mother or other woman subjected to such service, should become absolutely free on attaining the age of twenty-five, the master in the meantime to provide "proper nourishment and cloathing" for the child, but to be entitled to put him to work, all issue of such children to be free whenever born. It further declared that any voluntary contract of service or indenture should not be binding longer than nine years. Upper Canada was the first British possession to provide by legislation for the abolition of slavery.⁹

⁹ Simcoe was almost certainly the prime mover in the legislation of 1793. When giving the royal assent to the bill he said: "The Act for the gradual abolition of Slavery in this Colony, which it has been thought expedient to frame, in no respect meets from me a more cheerful concurrence than in that provision which repeals the power heretofore held by the Executive Branch of the Constitution and precludes it from giving sanction to the importation of slaves, and I cannot but anticipate with singular pleasure that such persons as may be in that unhappy condition which sound policy and humanity unite to condemn, added to their own protection from all undue severity by the law of the land may henceforth look forward with certainty to the emancipation of their offspring." See *Ont. Arch. Rep. for 1909*, pp. 42-43.

I do not understand the allusion to "protection from undue severity by the Law of the land." There had been no change in the law, and undue severity to slaves was prevented only by public opinion. It is practically certain that no such bill as that of 1798 would have been promoted with Simcoe at the head of the government as his sentiments were too well known.

Vermont excluded slavery by her Bill of Rights (1777), Pennsylvania and Massachusetts passed legislation somewhat similar to that of Upper Canada in 1780; Connecticut and Rhode Island in 1784, New Hampshire by her Constitution in 1792, Vermont in the same way in 1793; New York began in 1799 and completed the work in 1827, New Jersey 1829. Indiana, Illinois, Michigan, Wisconsin and Iowa were organized as a Territory in 1787 and slavery forbidden by the Ordinance, July 13, 1787, but it was in fact known in part of the Territory for a score of years. A few slaves were held in Michigan by tolerance until far into the nineteenth century notwithstanding the prohibition of the fundamental law (*Mich. Hist. Coll.*, VII, p. 524). Maine as such probably never had slavery, having separated from Massachusetts in 1820 after the Act of 1780; although it would seem that as late as 1833 the Supreme Court of Massachusetts left it open when slavery was

It will be seen that the statute did not put an end to slavery at once. Those who were lawfully slaves remained slaves for life unless manumitted and the statute rather discouraged manumission, as it provided that the master on liberating a slave must give good and sufficient security that the freed man would not become a public charge. But, defective as it was, it was not long without attack. In 1798, Simcoe had left the province never to return, and while the government was being administered by the time-serving Peter Russell,¹⁰ a bill was introduced into the Lower House to enable persons "migrating into the province to bring their negro slaves with them." The bill was contested at every stage but finally passed on a vote of eight to four. In the Legislative Council it received the three months' hoist and was never heard of again.¹¹ The

abolished in that State (*Commonwealth v. Aves*, 18 Pick. 193, 209). (See Cobb's *Slavery*, pp. clxxi, clxxii, 209; Sir Harry H. Johnston's *The Negro in the New World*, an exceedingly valuable and interesting work, but not wholly reliable in minutiae, pp. 355 et seq.)

¹⁰ Russell became administrator of the Government of Upper Canada, July 21, 1796, and held that position until the arrival of the new Lieutenant-Governor General Peter Hunter, August 16, 1799.

¹¹ *Ont. Arch. Rep. for 1909*, pp. 64, 69, 70, 71, 75; *ibid.* for 1910, pp. 67, 68, 69, 70.

The bill was introduced in the Lower House by Christopher Robinson, member for Addington and Ontario. He was a Virginian Loyalist, who in 1784 emigrated to New Brunswick, and in 1788 to that part of Canada, later Lower Canada; and in 1792 to Upper Canada. Accustomed from infancy to slavery, he saw no great harm in it—no doubt he saw it in its best form.

The chief opponent of the bill was Robert Isaac Dey Gray, the young Solicitor General, the son of Major James Gray, a half-pay British Officer. He studied law in Canada. He was elected member of the House of Assembly for Stormont in the election of 1796, and again in 1804.

The motion for the three months' hoist in the Upper House was made by the Honorable Richard Cartwright seconded by the Honorable Robert Hamilton. These men, who had been partners, generally agreed on public measures and both incurred the enmity of Simcoe. He called Hamilton a Republican, then a term of reproach distinctly worse than Pro-German would be now, and Cartwright was, if anything, worse. But both were men of considerable public spirit and great personal integrity. For Cartwright see *The Life and Letters of Hon. Richard Cartwright*, Toronto, 1876. For Hamilton see Riddell's edition of *La Rochefoucault's Travels in Canada in 1795* (Toronto, 1817), in *Ont. Arch. Rep. for 1916*; Miss Carnochan's *Queen-*

argument in favor of the bill was based on the scarcity of labor which all contemporary writers speak of, the inducement to intending settlers to come to Upper Canada where they would have the same privileges in respect of slavery as in New York and elsewhere; in other words the inevitable appeal to greed.

After this bill became law, slavery gradually disappeared. Public opinion favored manumission and while there were not many manumissions *inter vivos*¹² in some measure owing to the provisions of the act requiring security to be given in such case against the free man becoming a public charge, there were not a few emancipated by will.¹³

ston in Early Years, Niagara Hist. Soc. Pub. No. 25; Buffalo Hist. Soc. Pub. Vol. 6, pp. 73-95.

There was apparently no division in the Upper House although there were five other Councillors in addition to Cartwright and Hamilton in attendance that session, viz.: McGill, Shaw, Duncan, Baby and Grant; and the bill passed the committee of the whole.

¹² Slaves were valuable even in those days. A sale is recorded in Detroit of a "certain Negro man Pompey by name" for £45 New York Currency (\$112.50) in October, 1794; and the purchaser sold him again January, 1795, for £50 New York Currency (\$125.00). (*Mich. Hist. Coll.*, XIV, p. 417.) But it would seem that from 1770 to 1780 the price ranged to \$300 for a man and \$250 for a woman (*Mich. Hist. Coll.*, XIV, p. 659). The number of slaves in Detroit is said to have been 85 in 1773 and 179 in 1782 (*Mich. Hist. Coll.*, VII, p. 524).

¹³ A number of interesting wills are in the Court of Probate files at Osgoode Hall, Toronto. One of them deserves special mention, viz.: that of Robert I. D. Gray, the first Solicitor General of the Province, whose death was decidedly tragic. In this will, dated August 27, 1803, a little more than a year before his death, he releases and manumits "Dorinda my black woman servant . . . and all her children from the State of Slavery," in consequence of her long and faithful services to his family. He directs a fund to be formed of £1,200 or \$4,800 the interest to be paid to "the said Dorinda her heirs and Assigns for ever." To John Davis, Dorinda's son, he gave 200 acres of land, Lot 17 in the Second Concession of the Township of Whitby and also £50 or \$200. John, after the death of his master whose body servant and valet he was, entered the employ of Mr., afterwards Chief, Justice Powell; but he had the evil habit of drinking too much and when he was drunk he would enlist in the army. Powell got tired of begging him off and after a final warning left him with the regiment in which he had once more enlisted. Davis is said to have been in the battle of Waterloo; he certainly crossed the ocean and returned later on to Canada. He survived till 1871, living at Cornwall, Ontario, a well-known character—with him, died the last of all those

The number of slaves in Upper Canada was also diminished by what seems at first sight paradoxical, that is, their flight across the Detroit River into American territory. So long as Detroit and its vicinity were British in fact and even for some years later, Section 6 of the Ordinance of 1787 "that there shall be neither slavery nor involuntary servitude in the said territory otherwise than as punishment of crime" was a dead letter: but when

who had been slaves in the old Province of Quebec or the Province of Upper Canada.

In the *Canadian Archives*, M. 393, is the copy of a letter, the property of the late Judge Pringle of Cornwall, by Robert I. D. Gray to his sister Mrs. Valentine dated at Kempton February 16, 1804, and addressed to her "at Captain Joseph Anderson's, Cornwall, Eastern District": speaking of a trip to Albany, New York, he says:

"I saw some of our old friends while in the states, none was I more happy to meet than Lavine, Dorin's mother. Just as I was leaving Albany I heard from our cousin Mrs. Garret Stadts who is living in Albany in obscurity and indigence owing to her husband being a drunken idle fellow, that Lavine was living in a tavern with a man of the name of Broomly. I immediately employed a friend of mine, Mr. Ramsay of Albany, to negotiate with the man for the purchase of her. He did so stating that I wished to buy her freedom, in consequence of which the man readily complied with my wishes, and altho' he declared she was worth to him £100 (i.e., \$250) he gave her to me for 50 dollars. When I saw her, she was overjoyed and appeared as happy as any person could be, at the idea of seeing her child Dorin, and her children once more, with whom if Dorin wishes it, she will willingly spend the remainder of her days. I could not avoid doing this act, the opportunity seemed to have been thrown in my way by providence and I could not resist it. She is a good servant yet—healthy & strong and among you, you may find her useful, I have promised her, that she may work as much or as little as she pleases while she lives—but from the character I have of her, idleness is not her pleasure, I could not bring her with me, she wanted to see some of her children before she sets out; I have paved the way for her, and some time this month, Forsyth, upon her arrival here will forward her to you. . . ."

Then follows a pathetic touch:

"I saw old Cato, Lavine's father at Newark, while I was at Col^l. Ogden's; he is living with Mrs. Gouverneur—is well taken care of & blind—poor fellow came to *feel* me, for he could not *see*, he asked affectionately after the family."

In the will of the well-known Colonel John Butler of Butler's Rangers there are bequests to his son Andrew of "a negro woman named Pat": to his grandson John of "a Negro Boy named George . . . until the said negro arrives at the years that the Law directs to receive his freedom" and to John's sister Catharine "a negro girl named Jane" for a similar time.

Michigan was incorporated as a territory in 1805, the Ordinance of 1787 became legally and at least in form effective. Many slaves made their way from Canada to Detroit, then a real land of the free; so many, indeed, that we find that a company of Negro militia composed entirely of escaped slaves from Canada was formed in Detroit in 1806 to assist in the general defence of the territory.¹⁴

¹⁴ *Michigan Hist. Coll.*, XIV, p. 659. But the actual effect of the Ordinance of 1787, even after 1805 was not absolute. "As late as 1807 Judge Woodward refused to free a negro man and woman on a writ of habeas corpus, holding in effect that as they had been slaves at the time of the surrender in 1796, there was something in Jay's Treaty that forbade their release." *Michigan as a Province, Territory and State*, 1906, p. 339. "There is a tradition that even as late as the coming of Gen. John T. Mason, as Secretary of the Territory in 1831, he brought some domestic slaves with him from Virginia. It is not improbable that a few domestic servants continued with their old Masters down to the time of the adoption of the State Constitution" (in 1835) *ibid.*, p. 338, note.

Before Detroit and its adjoining territory were given up by the British to the Americans under Jay's Treaty, August, 1796, there were many instances of slaves escaping from the United States territory to British territory in that neighborhood and vice versa. One instance of escape from British territory will suffice.

Colonel Alexander McKee, a well-known and very prominent Loyalist of Detroit, lost a mulatto slave in 1795 and his friend and colleague Captain Matthew Elliott sent a man David Tait to look for him in what is now Indiana. Tait's success or want of success is shown by his affidavit before George Sharp a justice of the peace for the Western District of Upper Canada residing in Detroit. The whole deposition will be given as it illustrates the terms on which the two peoples were living at the time in that country, and shows that even then the charges were made which were afterwards made one of the pretexts for the War of 1812. It is given in the *Mich. Hist. Coll.*, Vol. XII, pp. 164, 165.

"DEPOSITION

"I being sent by Captain Elliott in search of a Molato man name Bill the property of Colonel McKee, which was thought to be at Fort Wayne, But on my Arrival at the Glaize was inform'd by the officer there that he was gone, they said he had gained his liberty, by getting into their lines he being stole from their Country.

"They abused the Gentlemen in this place very & Told me that Governor Sancom (Simcoe) Colonel England and Captain Elliott caused bills in print to be dropped near their fort, Encouraging their Soldiers to desert.

"They called Coll McKee & Capt Elliott dam'd rasculs and said that they gave the Indians Rum to make them Drunk to prevent them from going to Counsil & That Capt Brent they said was a Dam'd rascul and had done every-

The number of slaves in Upper Canada cannot be ascertained with anything approaching accuracy. The returns of the census of 1784 show that very many of the 212 slaves in the District of Montreal, which then extended from the Rivers St. Maurice and Godfrey to the Detroit River *de jure* and to the Mississippi *de facto*, were the property of the United Empire Loyalists on the St. Lawrence in territory which in 1791 became part of the new Province of Upper Canada.

The settlement crept up the St. Lawrence and Lake Ontario so as to be as far as the River Trent by the end of the eighteenth century: and Prince Edward County had also its quota of settlers. Until the nineteenth century had set in there were practically no settlers from the Trent to near York (Toronto) but that splendid territory of level clay and loam land covered by magnificent forests of beech and maple gradually filled in and by the 30's was fairly well settled. In the latter territory there were very few, if any, slaves.¹⁵

Farther east, however, in what became the Eastern and Midland Districts there were many slaves. It is probable that by far the greatest number had their habitat in that region. When York became the provincial capital (1796-7) slaves were brought to that place by their masters. In the Niagara region there were also some slaves, in great part bought from the Six Nation Indians as some of these in the eastern part of the province were bought from the Mis-

thing in his power against them. But they said in Course of Nine Months that they Expected to be in full possession of Detroit and all the Country between their & it & I begged liberty to withdraw when Major Hunt told me to make the best of my way from Whence I came, while I was getting ready to return the Serjeant of their Guard came & Told me it was the Majors orders that I should leave the place immediately & not to stay about any of the Indian Camps. Which Orders I obeyed.

(signed) DAVID TAIT.

Sworn before me at Detroit 4th August 1795.

GEO SHARP, J. P. - W. D."

Indian Affairs, M. G. VII.

¹⁵ I have found no reliable accounts of slaves in this region—some traditions which I have investigated proved unreliable and illusory.

sissaguas who had a rendezvous on Carleton Island near Kingston. In the Detroit region there were many slaves, some of them Panis;¹⁶ and many of both kinds, Panis and Negro bought from the Shawanese, Pottawattaimies and other Western Indians, taken for the most part from the Ohio and Kentucky country. Most of these slaves were west of the river, few being in the Province of Upper Canada *de jure*. Omitting Detroit, the number of slaves in the province at the time of the Act of 1793 was probably not far from 500.¹⁷

In the Eastern District, part of which became the District of Johntown in 1798, there were certainly some slaves. Justus Sherwood one of the first settlers brought a Negro slave Caesar Congo to his location near Prescott. Caesar was afterwards sold to a half pay officer Captain Bottom settled about six miles above Prescott and after about twenty years service was emancipated by his master. Caesar afterwards married a woman of color and lived in Brockville for many years and until his death. Daniel Jones another old settler had a female Negro slave and there were a few more slaves in the district.¹⁸

¹⁶ I cannot trace many Panis slaves in Upper Canada proper; that there were some at Detroit is certain and equally certain that some were at one time on both shores of the Niagara River. I do not know of an account of the numbers of slaves at the time; in Detroit, March 31, 1779, there were 60 male and 78 female slaves in a population of about 2,550 (*Mich. Hist. Coll.*, X, p. 326); Nov. 1, 1780, 79 male and 96 female slaves in a somewhat smaller population (*Mich. Hist. Coll.*, XIII, p. 53); in 1778, 127 in a population of 2,144 (*Mich. Hist. Coll.*, IX, p. 469); 85 in 1773, 179 in 1782 (*Mich. Hist. Coll.*, VII, p. 524); 78 male and 101 female (*Mich. Hist. Coll.*, XIII, p. 54). The Ordinance of Congress July 13, 1787, forbidding slavery "northwest of the Ohio River" passed with but one dissenting voice, that of a delegate from New York was quite disregarded in Detroit (*Mich. Hist. Coll.*, I, 415); and indeed as has been said, Detroit and the neighboring country remained British (*de facto*) until August, 1796, and part of Upper Canada from 1791 till that date.

¹⁷ This is indicated by a number of facts none of much significance and all together far from conclusive—but it is a mere estimate perhaps not much more than a guess and I should not be astonished if it were proved that the estimate was astray by 100 either way. Indeed contemporary estimates gave for the Nassau District alone in 1791, 300 Negro slaves and a few Panis. Col. Mathew Elliott in 1784 brought more than 50 slaves to his estate at Amherstburg.

It is possible that this part of the province was the home of a Negro who at the age of 101 appeared at the Assize Court at Ottawa in 1867 to give evidence. He was born in the Colony of New York in 1766, had been brought to Upper Canada by his master, a United Empire Loyalist, had fought through the war of 1812 on the British side, was present at the Battles of Chippewa and Lundy's Lane and was wounded at Sackett's Harbor.¹⁹

In the Midland District at Kingston such leading families as the Cartwrights, Herkimers and Everetts were slave owners. Further west the Ruttans, Bogarts, Van Alstyne,²⁰ Petersons, Allens, Clarks, Bowers, Thompsons, Meyers, Spencers, Perrys, Pruyns, speaking generally all the people of substance had their slaves.²¹

¹⁸ See letter of Sheriff Sherwood, *Papers &c, Ontario Historical Society* 1901, Vol. 3, p. 107. Justus Sherwood came from Vermont, originally from Connecticut, joined Burgoyne's army in 1777 and came to Canada in 1778, joined Rogers' Rangers and served during the war. He came to Prescott in 1784. He had had a not unusual experience with the Continentals. His "Negroe wench and two negroe children" had been seized and "sold to Wm. Drake." (Second *Ont. Arch. Rep.*, 1904, p. 820.) Daniel Jones, father of Sir Daniel Jones of Brockville, came from Charlotte County, New York (*ibid.*, p. 398). He was also a native of Connecticut.

¹⁹ He was in full possession of all his faculties and had been brought to Ottawa to prove the death of one person in 1803 and of another in 1814. The action was *Morris v. Henderson* "Ottawa Citizen" May 3, 1867. Robert I. D. Gray mentioned in note 13 above, came from this district.

²⁰ A Van Alstyne—Major Peter Van Alstyne—was elected to represent Prince Edward County in the first Legislative Assembly when Philip Dorland was unseated because he would not take the prescribed oath being a Quaker.

²¹ See the interesting paper read before the Women's Historical Society of Toronto by Mrs. W. T. Hallam, B.A., and published in *The Canadian Churchman*, May 8, 1919, republished in pamphlet form. I am authorized by Mrs. Hallam to make full use of her researches and I take advantage of this permission. Mrs. Hallam has also the following:

"There is an old orchard between Collins Bay and Bath, Ontario, now used as a garden, which belongs to the Fairfield family. The children of this Loyalist family brought the seeds in their pockets from the old home in Vermont, and here lie buried the slaves belonging to the Fairfield and Pruyn families. On the way over they milked the cows, which were brought with them, and sometimes the milk was the only food which they had. The old Fairfield Homestead, built in 1793, is still standing, but the negro quarters are unused, for as those who live there say, "On a hot day you would declare the slaves were still there."

It may be noted that there are many records of births, deaths and marriages of slaves. In the Register for the Township of Fredericksburg (Third Township) of the Reverend John Langhorn, Anglican clergyman, we find in 1791, November 13, that he baptized "Richard son of Poms and Nelly a negro living with Mr. Timothy Thompson."²² On October 6, 1793, "Richard surnamed Pruyn a negro, living with Harmen Pruyn," on March 2, 1796, "Betty, surnamed Levi, a negro girl living with Johannes Walden Meyers" of the Township of Thurlow. On April 22, 1805, "Francis, son of Violet, a negro woman living with Hazelton Spencer²³ Esq. by Francis Green." We find

Miss Alice Fairfield of the White House, Collins Bay, a descendant of these Fairfields gives the following account in a paper read before the Woman's Historical Society, Toronto (of which Mrs. Seymour Corley of Toronto has been good enough to furnish me a copy) "In March 1799, Stephen Fairfield married Maria Pruyn (from Kinder Hook, N. Y.), whose marriage portion included several slaves. They remained with the family as a matter of course after the law had given them their freedom. Of their devotion a story is told—"Mott" the old black nurse of my great grandmother walked to York (Toronto) a distance of 160 miles in cold weather to warn her of a plot against her property—the shoes were literally worn off her feet." The writer adds "The Tory branch of the Fairfield family that came to Canada were from Paulet County, Vermont . . . they brought some 'niggers' as they called their black slaves, into Canada." "The first apples grown in the country were raised from the seeds of apples with which the children had filled their pockets at the old home."

A contributor to the *Napanee Banner* writes:

"There has been considerable controversy of late whether slaves ever were owned in this section of Canada. The Allens brought three slaves with them who remained with the family for years. Thomas Dorland also had a number of slaves who were members of the house-hold as late as 1820. The Pruyns who lived on the front of Fredericksburg had, we are informed, over a dozen slaves with them. The Ruttans of Adolphustown brought two able-bodied slaves with them. Major Van Alstyne also had slaves; so had John Huyck who lived north of Hay Bay, and the Bogarts near neighbors, and the Trampours of the opposite side of Hay Bay. The Clarks of Ernestown, now called Bath, owned slaves who were with them years after their residence in Canada. The Everetts of Kingston Township and the Cartwrights of Kingston had theirs."

²² A man of considerable note: in 1800 appointed with Richard Cartwright, Commissioner to settle the finances between the two Provinces.

²³ Member for Lenox, Hastings and Northumberland Counties in the first Legislative Assembly: and afterwards Sheriff.

that "Francis, son of Violet . . . by Francis Green as was supposed" was buried January 17, 1806.²⁴

In a paper by the late J. C. Hamilton, a barrister of Toronto, he says that Lieutenant Governor Sir Alexander Campbell had favored him with a note concerning slaves at Kingston, which concluded "I had personally known two slaves in Canada: one belonging to the Cartwright and the other to the Forsyth family."²⁵ When I remember them in their old age, each had a cottage, surrounded by many comforts on the family property of his master and was the envy of all the old people in the neighborhood."²⁶

York (Toronto) and its neighborhood were settled later but they received their quota of Negro slaves, at least the town did. In 1880, the *Gazette* at York announces to be sold "a healthy strong negro woman, about thirty years of age; understands cooking, laundry and the taking care of poultry. N. B. She can dress ladies' hair. Enquire of the Printers, York, Dec. 20, 1800."²⁷

The best people in the capital owned Negroes. Peter Russell who had been administrator of the government of the province and therefore the head of the State advertised in the *Gazette and Oracle* of February 19, 1806:

"To be sold: a Black Woman named Peggy, aged forty years and a Black Boy her son named Jupiter, aged about fifteen years, both of them the property of the Subscriber. The woman is a tolerable cook and washerwoman and perfectly understands making soap and candles. The boy is tall and strong for his age, and has been employed in the country business but brought up principally as a house servant. The price of the woman is one hundred and fifty dollars. For the boy two hundred dollars payable in three

²⁴ The Pruyns of Fredericksburg are credited with owning more slaves than any other family in that region. Mrs. Hallam, *ut supra*, p. 4.

The above extracts are taken from the Registers published by the *Ont. Hist. Soc.*, Vol. 1.

²⁵ Both prominent families in Kingston.

²⁶ *Trans. Can. Inst.*, Vol. 1 (1889-1890), p. 106.

²⁷ For this and the following incident see that most interesting book "*Toronto of Old*" by Henry Scadding, D.D., Toronto, 1873, pp. 293, 294, 295.

years with interest from the day of sale and to be secured by bond, &c. But one-fourth less will be taken for ready money."

Peggy was not a satisfactory slave, she had awkward visions of freedom. On September 2, 1803, Russell advertised: "The subscriber's black servant Peggy not having his permission to absent herself from his service, the public are hereby cautioned from employing or harbouring her without the owner's leave. Whoever will do so after this notice may expect to be treated as the law directs."

Peggy was not the only slave who was dissatisfied with her lot. On March 1, 1811, William Jarvis, the Secretary of the Province "informed the Court that a negro boy and girl, his slaves, had the evening before been committed to prison for having stolen gold and silver out of his desk in his dwelling house and escaped from their said master; and prayed that the Court would order that the said prisoners with one Coachly a free negro, also committed to prison on suspicion of having advised and aided the said boy and girl in eloping with their master's property. . . ." It was "ordered that the said negro boy named Henry commonly called Prince be recommitted to prison and there safely kept till discharged according to law and that the said girl do return to her said master and Coachly be discharged."²⁸

Jarvis had slaves when he resided at Niagara. We find in the Register of St. Mark's Parish there an entry of Feb-

²⁸ Henry Scadding's *Toronto of Old*, p. 296. Dr. Scadding, speaks of his "in former times" gazing at Amy Pompadour with some curiosity.

Miss Elizabeth Russell, sister of the Administrator, had a slave, a pure Negro Amy Pompadour, whom she gave to Mrs. Denison wife of Captain John Denison, an old comrade in arms of her brother's.

²⁹ *Ibid.*, p. 292. The boy if he had stolen his master's money would be guilty of grand larceny, a capital offence at the time and consequently not tried at the Quarter Sessions. He was, therefore, recommitted to prison to await the Court of Oyer and Terminer and General Gaol Delivery commonly called the Assizes.

The master probably withdrew the charge against the girl and Coachly, or they may have been so fortunate as that there was no evidence against them.

ruary 5, 1797, of Moses and Phoebe, Negro slaves of Mr. "Sec'y Jarvis." Nor is this a unique entry for we find this: "1819 April 4, Cupitson Walker and Margt. Lee (of Colour)," but these may have been free.

There were baptized: "1793, January 3, Jane a daughter of Martin, Col. Butler's Negro," "1794, September 3, Cloe, a mulatto," "1800, March 29, Peggy a mulatto (*filia populi*)," "1807, May 10, John of a negro girl (*filius populi*)" and in the same list was a soldier shot for desertion, a soldier who shot himself, "an unfortunate stranger," "R. B. Tickel, alas he was starved," an Indian child, "Cut-nose Johnson, a Mohawk chief" and there is recorded the burial of "Mrs. Waters a negro woman," September 29, 1802.³⁰

Slaves continued to run away. Colonel Butler in the *Upper Canada Gazette* of July 4, 1793, advertised a reward of \$5 for his "negro-man servant named John."³¹ On August 28, 1802, Mr. Charles Field of Niagara advertised in the *Herald*: "All persons are forbidden harbouring, employing or concealing my Indian Slave Sal, as I am determined to prosecute any offender to the extremity of the law and persons who may suffer her to remain in or upon their premises for the space of half an hour, without my

³⁰ See the lists in the *Ont. Hist. Soc. Papers* (1901), Vol. 3, pp. 9 sqq.

In the list of marriages are found: "1797, Oct. 12, Cuff Williams and Ann, Negroes from Mr. C. McNabb"; "1800, Dec. 1, Prince Robinson and Phillis Gibson, Negroes" and six other marriages down to 1831 between persons "of Colour". These last were probably not slaves.

That Joseph Brant "Thayendinaga," the celebrated Indian Chief, had Negro slaves has been confidently asserted and as confidently denied. That there were Negroes in his household seems certain and their *status* was inferior. Whether he called them slaves or not, it is probable that he had full control of them.

See Stones' *Life of Brant*, New York, 1838. He rather boasted of his slaves. He was attended on his journeys and at table by two of them, Patton and Simon Gauseville. Hamilton in his *Osgoode Hall*, Toronto, 1904, says (p. 21): "Thayendinaga lived surrounded with slaves and retainers in barbarous magnificence at Burlington." But that is rhetoric.

³¹ *Trans. Can. Inst.*, Vol. 1 (1889-1890), p. 105.

written consent will be taken as offending and dealt with accordingly.''³²

There was always a demand for good slaves. For example, in the *Gazette and Oracle of Niagara* October 11, 1797, W. & J. Crooks of West Niagara "Wanted to purchase a negro girl of good disposition": a little later, January 2, 1802 the *Niagara Herald* advertised for sale "a negro man slave, 18 years old, stout and healthy; has had the Smallpox and is capable of service either in the house or out-doors. The terms will be made easy to the purchaser, and cash or new lands received in payment." On January 18, 1802, the *Niagara Herald* proclaimed for sale: "the negro man and woman, the property of Mrs. Widow Clement. They have been bred to the business of a farm; will be sold on highly advantageous terms for cash or lands."'³³

Slavery in Upper Canada continued until the Imperial Act of 1833³⁴ but there does not seem to be any record of sales after 1806. Probably the last slaves to become free were two who are mentioned by the late Sir Adam Wilson, Chief Justice successively of the Courts of Common Pleas and Queen's Bench at Toronto. These were "two young slaves, Hank and Sukey whom he met at the residence of Mrs. O'Reilly, mother of the venerable Miles O'Reilly, Q. C., in Halton County about 1830. They took freedom under the Act of 1833 and were perhaps the last slaves in the province."'³⁵

³² Dr. Scadding *ut supra*, p. 295. This is almost the only trace of Panis slavery in Upper Canada, proper, which I have found. The attempt to make a crime by the advertiser is not without precedent or imitation: it was, however, merely a threat and a *brutum fulmen*.

³³ Dr. Scadding *ut supra*, pp. 294, 295.

Such advertisements as these of 1802 indicate an uneasiness as to the security of the slave property. Dr. Scadding remarks "Cash and lands were plainly beginning to be regarded as less precarious property than human chattels," *ibid.*, p. 295.

³⁴ See *supra*, p.

³⁵ *Trans. Can. Inst.*, *ut supra*, p. 106.

These if actual slaves could not have been very young. If they were brought into the province after the Act of 1793 they would become free *ipso*

In the Detroit neighborhood there were undoubtedly many slaves, Panis and Negro: most of these were lost to the province on the delivery up of the retained territory in 1796 under the provisions of Jay's Treaty. But some were on the Canadian side and some were brought over by their masters on the surrender. Colonel Matthew Elliott who settled in 1784 just below Amherstburg brought many slaves, some sixty it is said. The remains of slave quarters are still in existence on the place. Jacques Duperon Baby the well-known fur-trader had at least thirty.

Antoine Louis Descompte dit Labadie, who raised a family of thirty-three children was the owner of slaves also. He was a wealthy farmer of the Township of Sandwich (now Walkerville) and died in 1806, aged 62. On May 26, 1806, he made at Sandwich his will by which he made the following bequest: "I also give and bequeath to my wife the use or service of two slaves that she may select, as long as she continues to be my widow." After a number of bequests there follows: "I will that all my personal property not here above bequeathed as well as my slaves with the exception of the two left to my wife, be portioned out or sold, and that the proceeds arising therefrom be equally divided between my said wife and the nine children³⁶ born out of my marriage with her."

Some of these slaves were probably Panis. There is extant a parchment receipt dated at Detroit, October 10, 1775, which reads:

"Je certifie avoir vendu et livré au Sieur Labadie, une esclave Paniese³⁷ nommée Mannon pour et en considération de la quantité de quatre-vingt minots³⁸ de Blé de froment qu'il doit me payer

facto. If born after that Act they would not properly speaking be slaves at all but only subject to service until the age of 25.

If they were slaves they must have been at least 37 in 1830; but probably they were born after 1793 and had not attained the age of 25 in 1833. They might then be young as described by Sir Adam.

³⁶ Labadie had been twice married.

³⁷ For "Panise."

³⁸ The French Minot is 39.36 litres; the Canadian 36.34 litres or 63.94 pints—the bushel is 64 pints—the Canadian minot is consequently almost exactly one bushel.

à mesure qu'il aura au printemps prochain, donné sous ma main au Detroit ce dixième jour d'Octobre, 1775.

Temoin (Signé) James Sterling³⁹
Signé) John Porteous.

Some of the reports of judges who presided over criminal assizes, moreover, contain references to slavery. Mr. Justice Powell tried a Negro, Jack York, with a jury at Sandwich for burglary in 1800. He was found guilty and in accordance with the law at that time, was sentenced to death. Powell respited the prisoner that the pleasure of the Lieutenant Governor might be known. The Lieutenant-Governor at that time was General Peter Hunter a rigid disciplinarian. Hunter wrote Powell that as York had been convicted of "the most atrocious offence without any circumstances of doubt or alleviation" he was to be hanged. When York was made aware of his fate, he promptly escaped from the ramshackle gaol at Sandwich.

In the proceedings Captain McKee informed the judge that the main witness had "been an Indian prisoner redeemed by his father and had lived in his kitchen and he did not think her credit good." She was one of Mr. James Girty's three Negroes and "known to be saucy."⁴⁰

³⁹ *Essex Historical Society—Papers and Addresses*, Vol. 1, Windsor, Ont. (1913), pp. 13, 39, 48-52.

This is translated thus: I certify that I have sold and delivered to Mr. Labodie a Panis slave called Manon for and in consideration of 80 minots (practically 80 bushels) of wheat which he is to pay me as he has it the coming spring—given under my hand at Detroit this 10th day of October, 1775.

WITNESS:

(Signed)

(Signed) JOHN PORTEOUS.

JAMES STERLING.'³⁹

⁴⁰ The fact was that Jack York had broken into McKee's dwelling house to commit rape and he had committed rape on the person of Mrs. Ruth Sufflemine (or Stufflemine).

Powell's report is dated from Mount Dorchester, September 22, 1800. *Canadian Archives, Sundries U. C. 1792-1800*; Hunter's decision in May is in *Canadian Archives Letters Hunter to Heads of Departments*, p. 65; York's escape is *ibid.*, p. 84; the Death Warrant is referred to in *Canadian Archives Sundries U. C. 1792-1800*.

There were certainly slaves in the Western District. The will of Antoine Louis Descomps Labadie made May 26, 1806, contains a bequest "I also give and bequeath to my wife Charlotte, the use or service of two slaves that she

Another report nearly a score of years later may be of interest. It can be best understood in its historical setting. During the war of 1812, as soon as the American invasion of Canada began, prices of all commodities began to soar.⁴¹ There was a great demand for beef for the troops regular and militia and the commissariat was not too scrupulously particular to inquire the source whence it might come. The result was that a crime which had been almost unknown suddenly increased to alarmingly large proportions. Cattle roaming in the woods were killed and the meat sold to the army. Prosecutions were instituted in many cases. It was found that the perpetrators were generally, but by no means always, landless men, not infrequently refugee slaves, who had come to the province from the United States. The offence was punishable with death:⁴² and convictions were not hard to obtain. But the punishment of death was not in practice actually inflicted.

Whatever the cause, the crime continued until normal conditions were reestablished when it became as rare as it had been before the war. At the Fall Assizes, 1819, at York before Mr. Justice Campbell and a jury, a man of color, Philip Turner, was convicted of stealing and killing a heifer and sentenced to death: Mr. Justice Powell who

may select as long as she continues to be my widow." "A black boy slave to Mrs. Benton, widow of the late Commodore of the Lakes" seems to have been as bad as Jack York. Convicted at Kingston of a house robbery, a capital crime he had the "benefit of clergy" that is, set free as a first offence. But he did not mend his ways. He committed burglary and was convicted at Kingston 1795 before Mr. Justice Powell. The judge sentenced him to be hanged but recommended a pardon. He said the boy was said to be 17 but looked no more than 15 and in view of his education as a slave he hoped that his "would not be the first capital example." *Can. Arch.*, B. 210.

⁴¹ In a memorial by the judges of the Court of King's Bench to the Lieutenant Governor, January 10, 1814, they point out that prices have doubled since the war. The prices before the war and at the time were of bread 1 / and 2 /; of beef 6 d and 1 /; of wood 7 / 6 and 15 /.

⁴² Before 1772, this was not a crime at all but only a civil trespass; the Waltham Black Act (1722) 9 George I, c. 22 made it a felony punishable with death without benefit of clergy. This continued to be the law in England until the Act (1827) 7, 8 George IV, c. 27 (Imp.), and in Upper Canada until 1841.

had been in the Commission of Oyer and Terminer with Campbell reported to the Lieutenant-Governor⁴³ that there had as yet been no execution for this offence in the province and recommended that the sentence should be committed to banishment for life from His Majesty's dominions.⁴⁴ Tradition has it that Turner was a refugee from the United States and begged to be hanged rather than sent back where he would be again enslaved.⁴⁵

When the fugitive slave reached the soil of Upper Canada he became and was free with all the rights and privileges of any other freeman: but sometimes the former condition of servitude had unhappy results. One case will suffice. John Harris was a slave in Virginia. He rented a house in Richmond and lived in it with his wife Sarah Holloway. Harris was a painter and gave the greater part of his earnings to his master. The wife earned money by washing and gave to her mistress part of her scanty earnings. The wife's second name was that of her master Major Holloway in whose house she had been married in 1825 to Harris by the Reverend Richard Vaughan, a Baptist minister, a free man. The couple had three children.

In 1833 Harris effected his escape to Upper Canada and came to Toronto (then York) in the spring of 1834 under the name of George Johnstone. In 1847 he obtained from John Beverley Robinson, Chief Justice of Upper Canada a deed of three acres of land part of Lot 12 in the First Concession from the bay east of the river Don in the Township of York. He died without a will in February, 1851. The deserted wife after his escape married a man by the

⁴³ Sir Peregrine Maitland.

⁴⁴ Banishment existed as a punishment in Upper Canada until 1841, when it was finally abolished and succeeded by imprisonment. Banishment was a very common alternative for hanging. I have counted as many as four cases at one assize.

⁴⁵ The tradition is a floating and rather indefinite one. It has some plausibility but there is nothing which to my mind can be dignified by the name of proof. The facts of the Turner case will be found in a Report by Mr. (afterwards Chief) Justice Powell to Sir Peregrine Maitland's Secretary Edward McMahon, November 1, 1819, *Canadian Archives, Sundries, U. C.*, 1819.

name of Brown. She continued a slave until the fall of Richmond and died in 1869 or 1870.⁴⁶

⁴⁶ *Canadian Archives*, Q. 324, pp. 432, 436 Letter, June 8, 1818, from "Thos. N. Stewart, Capt. H. P. late Royal Newfoundland Regiment" to the Right Honourable Earl Bathurst, dated from Barnstable, North Devon.

Turning to a more pleasant subject, while it may not be strictly within the purview of this treatise, it may be permitted to bring to light from the files of the Canadian Archives a story of a poor black woman who showed true humanity. It may be considered by some at the expense of her patriotism. That will not be admitted by everyone, for what share did the Negro have in America in which he lived more than in Britain which offered him freedom?

When in May, 1813, General Dearborn took Fort George in Upper Canada, one of his prisoners was Captain Thomas N. Stewart of the Royal Newfoundland Regiment who was wounded. Taken to the United States, he was with several other British officers kept for months a close prisoner at Philadelphia as a hostage under the retaliation system.⁴⁶

"At length," said he, "I with fourteen other officers made my escape from the prison at Philadelphia by sawing off the iron bars with the springs of watches, but from the active search which was made ten of my companions were retaken in the course of three days. I . . . attribute my success (as well as that of two more British officers) in being enabled to elude the vigilance of the enemy to the kindness and humanity of a poor black woman to whose protection we committed ourselves in our *real character* and situation: and notwithstanding a reward of one hundred dollars was offered for the apprehension of each officer without our even being able to reward her in an equal degree, she persevered in affording us comfort and accommodation, greatly to her own risk and loss by the total resignation of her small hut and a tender of her services to our use visiting us only at night with provisions, &c. This she continued to do for eight days. When it was thought that the active search was in a great degree abated I ventured by night to leave the abode of this black woman with the intention of going to the Headquarters of the British Army in Canada and this I ultimately succeeded in accomplishing."

His companions leaving one by one at different times also succeeded in returning to the service of their country. Having only \$70 and having to travel 600 miles, Capt. Stewart could give the woman only \$20: and all she received from all the officers was only \$50. He wrote Earl Bathurst, Secretary of State for War and the Colonies asking that she should be remunerated and saying that he would "be most happy to give the address and the source thro' which communication could be made."

Bathurst replied June 13, asking for particulars, and Captain Stewart June 18 wrote again on the eighteenth of June saying that the matter required the utmost circumspection and excusing himself from giving information until he had communication with America, hoping to point out the precise object whom "His Lordship has thought worthy of remuneration." No doubt the matter then passed into the Secret Service, as no further correspondence is preserved in documents open to the public.

About that time the eldest son came to Canada, and he brought an action as the heir-at-law against one Cooper, the person in possession. All the facts were clear and the only difficulty in the way was as to the validity of the marriage of the Negro. Chief Justice William Buell Richards, of the Court of Queen's Bench tried the case at the Fall Assizes, 1870, at Toronto. Evidence was given by a Virginia lawyer and judge⁴⁷ that there was no law in Virginia either authorizing or forbidding the marriage of slaves because "slaves were property and not persons for marital purposes. . . . In short, by the law of Virginia, slaves were but property, treated as property exclusively, except where by special Statute they were made persons."

On this evidence, therefore, the Chief Justice dismissed the action. The plaintiff appealed to the full Court of Queen's Bench urging that the slaves had done all they could to make their marriage legal. In vain, they were not British subjects and the rules of international law were too rigid to allow of the court holding the marriage legal. Mr. Justice Wilson in giving the judgment of the Court said:⁴⁸

"This is, no doubt, an unfortunate conclusion, for the plaintiff is undoubtedly the child of John Harris and Sarah

The motion was heard in Trinity Term, 34 Victoriae i.e. in February, 1871, see the report in 31 Upper Canada Queens Bench Reports, p. 182: *Harris v. Cooper*. The Court was composed of the Chief Justice William Buell Richards, afterward Sir William Buell Richards, Chief Justice of Canada, Mr. Justice Joseph Curran Morrison, afterwards a Judge of the Court of Error and Appeal, and Mr. Justice Adam Wilson, afterwards successively Chief Justice of the Court of Common Pleas, and of the Court of Queen's Bench.

⁴⁷ Two years after her first husband's death, that is, in 1853, the widow who had then married one Scott sold the lot to Mr. Boomer for \$300. Mr. Boomer sold two acres to Edward Osborne and he to Cooper for \$800. By 1871 the land had appreciated in value so as to make it worth a lawsuit. Of course, the widow never had any right to sell the land, but it was at least ungracious for her son to repudiate her deed.

⁴⁸ The law of Virginia as to marriages of slaves even with the consent of the master was fully and clearly stated by the Court of Appeals of Virginia in the case of *Scott v. Raub* (1872) 88 Virginia, 721. See also the decision of the Supreme Court of the United States in the case of *Hall v. United States*, 92 U. S. 127; and in *Alabama, Matilda v. Gardner*, 24 Alabama, 719.

who were made man and wife in form and by all the usual solemnities of real matrimony. The parents were of mature age, of sound sense, reason and understanding. The father had a trade which he followed by permission of his master for a yearly sum which he paid to him for the privilege, or as it is said 'he hired his own time.' He rented a house for himself; he was married with the consent of those who could give it by a minister in orders and in form at least under the sanction of religion: he lived with the woman he had taken as his wife and had children by her and left her only to gain his freedom; yet it is manifest by the force of positive human law, there was no marriage and no legitimate issue."⁴⁹

⁴⁹ 31 Upper Canada Queens Bench Reports at p. 195, 1871.